

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JESSICA C. MCGLOTHIN

PLAINTIFF

VERSUS

CAUSE NO.: 1:17-cv-83-LG-RHW

STATE FARM MUTUAL INSURANCE COMPANY

DEFENDANT

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S
MEMORANDUM IN SUPPORT OF MOTION TO STRIKE PLAINTIFF'S
UNTIMELY REQUESTS FOR ADMISSION**

COMES NOW, the Defendant, **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**, (hereinafter "State Farm"), improperly referred to as State Farm Mutual Insurance Company, by and through its attorneys in the above styled and numbered cause, and files this Memorandum in Support of Motion to Strike Plaintiff's Untimely Requests for Admission pursuant to Local Rule 26(b)(2) of the Northern and Southern Districts, and for cause would show unto the Court the following, to-wit:

FACTS

On August 3, 2017, this Court entered its Case Management Order setting the discovery deadline on January 4, 2018. [Doc. 9]. On November 29, 2017, Plaintiff propounded Interrogatories [Doc. 17] and Request for Production [Doc. 18] to State Farm. On January 3, 2018, the Parties filed a Joint Motion to Extend the Discovery and Motion Deadlines. [Doc. 22]. The Court granted the motion setting

the new discovery deadline on February 5, 2018. On February 5, 2018, the day discovery ended, Plaintiff filed a notice of Requests for Admission [Doc. 28] and propounded fourteen (14) Requests for Admission to State Farm. Ex. A – Plaintiff’s Requests for Admission to State Farm.

ARGUMENT

The Federal Rules of Civil Procedure provide that answers to interrogatories, as well as responses to requests for production of documents, are due within thirty days of service. Fed. R.Civ.P. 33(b)(3), 34(b). The local rules of this Court provide that discovery requests must be propounded sufficiently in advance of the discovery deadline, so that all responses will be due and all depositions concluded by the discovery deadline. Uniform District Court Rules, 26.1(B)(1), (2). The local rules further provide that discovery requests that seek responses or schedule depositions that would otherwise be answerable after the discovery deadline are not enforceable except by order of the Court for good cause shown, and that the discovery deadline may not be extended without the consent of the Court. *Barnett v. Tree House Cafe, Inc.*, No. CIVA 505CV195DCBJMR, 2006 WL 3083757, at *2 (S.D. Miss. Oct. 27, 2006) (*citing* Uniform District Court Rules, 26.1(B)(2), (3)).

In *Jarvis v. Wal-Mart Stores, Inc.*, 161 F.R.D. 337, 337 (N.D. Miss. 1995) the Court set a discovery deadline of February 15, 1995. Defendant propounded requests for admission on February 13, 1995, two days before the discovery deadline. The plaintiff argued that the requests were untimely because “they came

so close to the discovery deadline.” *Id* at 338. The court opined “it has been the policy of this court to treat requests for admission as a discovery device for purposes of establishing a deadline for service upon the other party. This being the case, the court is of the opinion that defendant’s requests that plaintiff be directed to respond to defendant’s request for admission should be denied. *Id* at 339.

In the present case, Plaintiff propounded requests for admissions on the day discovery ended, February 5, 2018. As such, it was impossible for State Farm to fully respond to the requests before the discovery deadlines ended, as required by the rules. Therefore, the Court should relieve State Farm of the duty to respond, and strike Plaintiff’s untimely discovery requests.

DATED: February 13, 2018.

Respectfully submitted,

BRYAN, NELSON, SCHROEDER,
CASTIGLIOLA & BANAHAN, PLLC
Attorneys for Defendant,

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**

BY: /s/ Calen J. Wills
JOHN A. BANAHAN (MSB 1731)
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CERTIFICATE OF SERVICE

I, **CALEN J. WILLS**, one of the attorneys for the Defendant, **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**, do hereby certify that I have this date electronically filed the foregoing Memorandum in Support of Motion to Strike Plaintiff's Untimely Requests for Admission with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

DATED: February 13, 2018.

BY: */s/ Calen J. Wills*
JOHN A. BANAHAH (MSB 1731)
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